VIRGINIA BOARD OF DENTISTRY

Regulatory-Legislative Committee

AGENDA

June 29, 2018

Department of Health Professions
Perimeter Center - 9960 Mayland Drive, 2nd Floor Conference Center
Henrico, Virginia 23233

TIME

10:00 a.m. **Call to Order – Augustus A. Petticolas, Jr., DDS, Chair**

Evacuation Announcement – Ms. Reen

Public Comment

Approval of Minutes

- **March 08, 2018** **PG.1**

Status Report on Legislation and Regulatory Actions – Ms. Yeatts

Committee Discussion

- **A1C Test and Diabetes** **PG.4**
- **Review Guidance Document 60-12 – Administration of Topical Oral Fluorides by Dental Hygienist** **PG.13**
- **Review Guidance Document 60-13 – Practice of a Dental Hygienist Under Remote Supervision** **PG.14**
- **Review Guidance Document 60-17 on Recovery Of Disciplinary Costs** **PG.18**
- **Review Guidance Document 60-19 for Dental Laboratory Subcontractor Work Order Form** **PG.21**

Next meeting

Adjourn

UNAPPROVED

VIRGINIA BOARD OF DENTISTRY
REGULATORY-LEGISLATIVE COMMITTEE MINUTES

March 8, 2018 | Department of Health Professions | Henrico, VA 23233

CALL TO ORDER: Dr. Augustus A. Petticolas, Jr. called the meeting of the Regulatory-Legislative Committee to order at 9:11AM. With 5 Board members present, a quorum was established.

MEMBERS PRESENT: Augustus A. Petticolas, Jr., D.D.S., Chair
Tonya A. Parris-Wilkins, D.D.S.
Tammy C. Ridout, R.D.H.
Sandra J. Catchings, D.D.S.
John M. Alexander, D.D.S.

MEMBERS ABSENT: James D. Watkins, D.D.S.

STAFF PRESENT: Sandra K. Reen, Executive Director
Sheila Beard, Executive Assistant
Elaine Yeatts, DHP Policy Analyst

PUBLIC COMMENT: Benita A. Miller, DDS – Objecting to fast track action to amend the restriction on advertising dental specialties
Karen McAndrew, DMD, MS - Objecting to fast track action to amend the restriction on advertising dental specialties
Kassie Schroth, McGuire Woods Consulting – Asking that the Board conforms its regulations to more closely reflect the statute addressing the requirement for permits for sedation and anesthesia; specifically, who can provide or administer sedation.
Frank Iuorno, DDS, MS - Objecting to fast track action to amend the restriction on advertising dental specialties
Stephanie Voth - Objecting to fast track action to amend the restriction on advertising dental specialties
Thomas Glazier, DDS, MSD - Objecting to fast track action to amend the restriction on advertising dental specialties
Ben Ross, DMD - Objecting to fast track action to amend the restriction on advertising dental specialties
Ursula Klostermyer, DDS, PhD - Objecting to fast track action to amend the restriction on advertising dental specialties
Tamika Atkins - Objecting to fast track action to amend the restriction on advertising dental specialties

Danielle McCormick, DDS, MS - Objecting to fast track action to amend the restriction on advertising dental specialties
Sorin Uram-Tuculescu, DDS – Objecting to adding PGY-1 Pathway for Licensure.
Daniel Bartling, DDS - Objecting to fast track action to amend the restriction on advertising dental specialties

APPROVAL OF MINUTES:

Dr. Catchings moved to accept the minutes of June 30, 2017 as written. The motion was seconded and passed.

LEGISLATION AND REGULATORY

Ms. Yeatts explained to the Committee that due to the change in administration, all regulatory actions waiting to be signed were sent back to the Secretary's office for review, which will not take place until the current session of the General Assembly is ended. A more detailed regulatory report will be provided at the Full Board Business Meeting on March 9, 2018.

A status report was provided about following regulatory actions:

- **Change in renewal schedule** – *waiting for Secretary Action.*
- **Conforming rules to ADA guidelines on moderate sedation** – *propose that the Board adopt as final.*
- **Reduction in renewal fees** – *In effect on February 21, 2018.*
- **Continuing education for practice by remote supervision** – *proposed regulation is in effect; final regulations need to be in place by May 12, 2019.*

COMMITTEE DISCUSSIONS:

Amending the restriction on Advertising Dental Specialties -
Ms. Yeatts advised that given the comments received on this action, the standard process will need to be followed. The Committee adopted a motion for the Board that this regulatory action be withdrawn as a Fast Track Action and that a NOIRA be submitted to start the standard regulatory process.

C.E. Credit for attending Board Meetings –
At the December 15, 2017 Board meeting, Dr. Alexander referred consideration of granting C.E. credit for attending Board meetings to the Regulatory-Legislative Committee for review. The Committee was not in favor of pursuing granting C.E. Credit for attending Board meetings and adopted a motion for the Board that the Board not pursue this.

Adding PGY-1 Pathway for Licensure –
Questions were raised at the December 15, 2017 Board meeting about eliminating the clinical exam requirement for applicants who have completed an advanced general dentistry or specialty program since the Board only issues general dental licenses. The Board referred this proposal to the Regulatory-

Legislative Committee for further discussion. The Committee adopted a motion for the Board that the Board not pursue adding PGY-1 as a pathway to licensure.

Regulatory-Advisory Panel Recommendations on Sedation Recommendations-

Proposed changes to Part VI of the Regulations Governing the Practice of Dentistry from the RAP was reviewed by the Committee. Ms. Reen explained to the Committee the intention of the RAP is to assist the Board in understanding changes needed to clarify the regulations. This process is a "pre" regulatory process. The regulatory process will begin once a NOIRA has been adopted.

After review of the panel's recommendations, the Committee adopted a motion for the Board that the Board issue a NOIRA to revise the Sedation Regulations.

ADJOURNMENT: With all business concluded, Dr. Petticolas adjourned the meeting at 10:32AM.

Augustus A. Petticolas, Jr., D.D.S., Chair

Sandra K. Reen, Executive Director

Date

Date

A1C TEST AND DIABETES:

Identified by Ms. Ridout as a topic of discussion while attending the 2018 Southern Conference of Dental Deans and Examiners Conference. Ms. Ridout asked at the March 09, 2018 Board Business Meeting if action is needed to allow dentists and dental hygienist to perform skin pricks. Ms. Reen responded that the definition of dentistry in the Code of Virginia may need to be changed to make this possible. Dr. Alexander assigned this topic to the Regulatory – Legislative Committee.

COMMONWEALTH of VIRGINIA

David E. Brown, D.C.
Director

Department of Health Professions
Perimeter Center
9960 Mayland Drive, Suite 300
Henrico, Virginia 23233-1463

www.dhp.virginia.gov
TEL (804) 367-4400
FAX (804) 527-4475

June 13, 2018

Harold J. Marioneaux, Jr., D.D.S.
4601 Opportunity Way
Williamsburg, VA 23188

Dear Dr. Marioneaux:

The Virginia Board of Dentistry would like to thank you for the submission of a petition for rule-making relating to regulations for dentistry. We understand that you are requesting an amendment to include in-office testing for diabetes within the scope of practice of dentistry.

This matter was discussed at a recent meeting of the Board at which questions were raised about whether this required a regulatory change or an amendment to the definition of practice in the Code of Virginia. To address that question, we have referred your petition to Board counsel in the Office of the Attorney General. If the Board receives advice that your petition can be considered for an amendment to regulations, we will proceed with publication and request for comment.

Again, the Board appreciates your interest in amending the regulations governing the practice of dentistry. If you have any questions about the petition process, please feel free to contact me at (804) 367-4437 or Elaine Yeatts, Agency Regulatory Coordinator at (804) 367-4688.

Very truly yours,

Sandra K. Reen
Executive Director
Virginia Board of Dentistry

cc: Elaine J. Yeatts
Agency Regulatory Coordinator

Received JUN 12 2018 SRK
Board of Dentistry

COMMONWEALTH OF VIRGINIA
Board of Dentistry

BHP JUN 12 2018

9960 Mayland Drive, Suite 300
Richmond, Virginia 23233-1463

(804) 367-4538 (Tel)
(804) 527-4428 (Fax)

Petition for Rule-making

The Code of Virginia (§ 2.2-4007) and the Public Participation Guidelines of this board require a person who wishes to petition the board to develop a new regulation or amend an existing regulation to provide certain information. Within 14 days of receiving a valid petition, the board will notify the petitioner and send a notice to the Register of Regulations identifying the petitioner, the nature of the request and the plan for responding to the petition. Following publication of the petition in the Register, a 21-day comment period will begin to allow written comment on the petition. Within 90 days after the comment period, the board will issue a written decision on the petition.

Please provide the information requested below. (Print or Type)

Petitioner's full name (Last, First, Middle initial, Suffix,) Marioneaux Harold J Jr		
Street Address 4601 Opportunity Way	**Area Code and Telephone Number** 757-258-6597	
City Williamsburg,	**State** VA	**Zip Code** 23188
Email Address (optional) marioneauxh@tncc.edu	**Fax (optional)**	

Respond to the following questions:

1. What regulation are you petitioning the board to amend? Please state the title of the regulation and the section/sections you want the board to consider amending. D0411 HbAlc in-office point of service testing

2. Please summarize the substance of the change you are requesting and state the rationale or purpose for the new or amended rule.
A code for the finger-stick capillary HbAlc glucose test procedure can foster its broader adoption. This test is relevant to dentists as diabetes is a risk factor related to periodontal disease. HbIAc testing enables a dentist to amend the patient's treatment planning depending on whether the results are the first indicator of a new diabetic condition, or an existing condition.

3. State the legal authority of the board to take the action requested. In general, the legal authority for the adoption of regulations by the board is found in § 54.1-2400 of the Code of Virginia. If there is other legal authority for promulgation of a regulation, please provide that Code reference.

Signature: /s/ Marioneaux Jr DDS **Date:** 6 June 18

D0411 – ADA Guide to Point of Care Diabetes Testing and Reporting

Developed by the ADA, this guide is published to educate dentists and others in the dental community on this procedure and its code first published in *CDT 2018* and effective January 1, 2018.

Introduction

Simple chair-side screening for dysglycemia via finger-stick random capillary HbA1c glucose testing can be used to rapidly identify high-risk patients. Chair-side screening and appropriate referral may improve diagnosis of pre-diabetes and diabetes.

A code for the finger-stick capillary HbA1c glucose test procedure can foster its broader adoption. This test is relevant to dentists as diabetes is a risk factor related to periodontal disease. It is akin to caries risk testing that relates to tooth decay and remedial restorative procedures and preventive procedures. Hb1Ac testing enables a dentist to amend the patient's treatment planning depending on whether the results are the first indicator of a new diabetic condition, or if the results indicate a change in the existing diabetic condition.

The full CDT Code entry (Nomenclature only; no Descriptor):

D0411 HbA1c in-office point of service testing

The following pages contain a number of Questions and Answers, all intended to provide readers with insight and understanding of the procedure and its reporting, including points to consider before offering this service to your patients.

Questions and Answers

1. What is HbA1c?

   Hemoglobin A1c, also known as glycated hemoglobin, is a measure of the amount of glucose attached to red blood cells and directly relates to the average blood glucose levels. Patient fasting is not required prior to an HbA1c test.

2. When should I suggest that a patient receive an HbA1c Point of Care Test (POCT)?

   There are a number of factors that could place a patient at risk of diabetes, some of which may already be in their dental records, and include:

   - Obesity or being overweight
   - Ethnic background (diabetes happens more often in Hispanic/Latino Americans, African-Americans, Native Americans, Asian-Americans, Pacific Islanders, and Alaska natives)
   - Sedentary lifestyle (exercise less than three times a week)
   - Family history (parent or sibling who has diabetes)

   A resource that will help identify patients who might be candidates for the D0411 procedure is the Point-of-care prediabetes identification (click on hyperlink to open) guide prepared jointly by the American Diabetes Association, the American Medical Association, and the Centers for Disease Control.

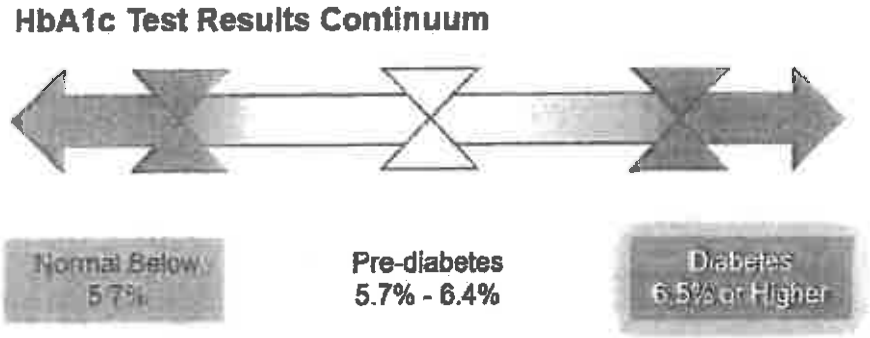
3. How is the procedure delivered?

   There are established protocols for acquiring and assaying the small sample of blood for POCT to measure HbA1c. Protocol steps include: a) finger selection; b) massaging, cleaning and drying the site; c) skin puncture with a lancet; d) wiping away the first blood before collecting the sample without "milking the finger" site; e) placing the sample into the analyzing device; and f) reading the results.

   Every blood donor has experienced skin puncture with a lancet. There can be some variations in steps e) and f), dependent on the test kit used.

4. What do the analysis results indicate?

   The HbA1c analyzing device displays a percent figure. There is a recognized range of percentages that is used to indicate whether the patient is considered normal, pre-diabetic or diabetic, as illustrated:



5. What should I do if my patient's HbA1c test result is at the pre-diabetes or diabetes percentage?

   A dentist should assess how this information affects the patients current and future treatment plans. In addition to informing the patient of the outcome, it would be appropriate to recommend they contact their physician for a definitive diagnosis. A third action would be to determine whether the patient's dental benefit plan provides coverage for additional prophylaxis procedures, if indicated.

6. How would the procedure's findings help my treatment planning for the tested patient?

   The screening result could lead to a definitive diagnosis of diabetes by a physician. A diagnosis of diabetes may indicate that the patient could benefit from more frequent prophylaxes than a person without such a diagnosis to maintain their oral health. Some dental benefit plans cover "extra" prophylaxis procedures for patients with diabetes.

7. Are there rules or regulations regarding in office HbA1c testing, documented with CDT Code D0411?

   Yes, be sure to check your state's Dental Practice Act to determine if testing is within the scope of your license. There are also federal, and state, regulations concerning laboratories that may affect your business decision to provide this service.

8. What federal or state regulatory requirements must I satisfy before offering this procedure to my patients?

There is an overarching federal regulation – Clinical Laboratory Improvement Amendments of 1988 (CLIA). Any dental practice that performs tests on human tissues, including blood, is considered a laboratory according to CLIA. This means that the practice requires certification by the state and the Centers for Medicare and Medicaid Services (CMS) before collecting and testing the blood sample.

The "finger-stick" point of service test considered to be of low complexity by the Food and Drug Administration (FDA), and is in the "waived" category of laboratory procedures. This means that CMS will issue two-year Certificate of Waiver (COW) to a dental office that performs this test. The COW fee is $150, and the dental office must perform only the waived test following the manufacturer's current instructions without changes. A COW holder is subject to announced or unannounced on-site inspections by CMS.

Federal regulations establish the requirements threshold. Local or state laws may be more stringent – there may be specific regulations concerning practice personnel who may administer the test; biohazard safety, including handling and disposing of medical waste.

For example, New Jersey's State Board of Dentistry ruled that it is within the scope of practice for New Jersey licensed dentists to perform in-office A1C diabetes screening tests for at-risk patients. The board noted that: a) such testing is not presumed to be the standard of care; and b) for A1C screenings beyond the normal range, dentists should refer patients to a physician for a formal evaluation, diagnosis, and treatment.

The following chart illustrates how a dental practice would be considered a laboratory under CLIA, and the applicable federal regulations. A red arrow points to where the D0411 procedure falls (Simple or Waived Tests), indicating that the dental practice is required to have the $150 two-year COW.

CLIA Flowchart

Is your dental practice considered a laboratory under CLIA?

Do you utilize human tissue samples or specimens at your office?
(i.e., saliva, blood, plaque, hard or soft tissue biopsy)

No. We do not and never have.

You are probably not a laboratory. If you do not take or send out samples, you are likely not affected by CLIA.

Yes, but we only take the samples in office, and send them to an outside lab for testing.

You are probably not a laboratory. If you use an outside laboratory to get results, that facility is a laboratory and you should check the CLIA registry online to guarantee that the laboratory is certified and follows federal, state and local law.

Yes. We perform tests to diagnose, prevent, treat, and assess patient health.

You are most likely a laboratory. Next, look at the FDA categories of test complexities to see what level(s) apply to you.

Local and state laws may override CLIA – check with your attorney. Your state dental association may also have information.

Certificate of Waiver
(i.e., blood glucose, cholesterol)
If the test is a simple laboratory procedure with an insignificant risk of erroneous results, you may be eligible for a certificate of waiver after your laboratory has been certified through the CLIA process. See the FDA website for a complete list of tests that have been waived. "Waived" does not mean you don't have to do anything; you still need to obtain certification, follow the manufacturer's instructions for test performance, and maintain the appropriate records.

Moderate Complexity, PPM
(e.g., INRatio2 device or microscopic examinations)
If the test is of moderate complexity or is a provider-performed microscopy procedure, you may be eligible for a Certificate for PPM. You need to apply to the CLIA program and designate the applicable waiver. See five types of certificates and CLIA enrollment.

High Complexity
See the FDA website for more information.

ADA American Dental Association®
America's leading advocate for oral health

9. What are a dentist's ethical obligations to deliver this procedure to patients (e.g., all patients; those presenting with signs or symptoms or medical history)?

   Within dentistry there is no consensus that HbA1c screening is considered a standard of care. In fact the New Jersey State Board of Dentistry has explicitly stated that this screening is not presumed to be a standard of care.

   From another perspective, the American Diabetes Association has published its *Standards of Medical Care in Diabetes 2016*, which addresses HbA1c testing. Links to this information, and others pertaining to diabetes, dentistry and oral health are published on the American Dental Association's web site – http://www.ada.org/en/member-center/oral-health-topics/diabetes

   A dentist should provide a patient with sufficient information about the procedure, including its relevance to both oral and general health, so that she or he can make an informed decision.

10. How do I close the referral loop – informing the patient's physician – of the finger-stick findings?

    If the HbA1c screening is delivered the findings should be conveyed to the patient's physician or appropriate health care provider. Before doing so be sure to have an information release form signed by the patient on file. These referrals must be tracked and documented. Failure to do so may lead to liability issues.

11. What should I do with the results if the patient does not have a physician or other health care provider who can act on the information?

    The patient should be informed of the screening's findings, be directed towards resources containing more information, and encouraged to become a physician's patient of record for their other health needs. These actions must be noted in the patient's dental records.

12. What is the likelihood of false measures since this is a screening type procedure and not a full lab test?

    The likelihood of false results is considered extremely low. This and the test's simplicity are factors that led the FDA to place this type of test into the "waived" category of laboratory procedures. They are also reasons why test kits are sold over-the-counter to individuals who wish to self-monitor.

13. What are the additional overhead costs and ongoing administrative activities that must be in place in order to offer this screening service?

    Before incorporating HbA1c screening a dental practice should consider factors that contribute to total cost. These include personnel time, consumable products and durable goods, additional training of personnel, additional safety and biohazard supplies, record keeping associated with good laboratory practices and the maintenance and storage of these records, certification fees, counseling and education of patients, and referral/tracking of referrals of patients.

14. What components of the D0411 procedure may be delegated to staff and which may only be performed by the dentist

    As with any procedure, the practitioner providing the service is determined by state law and licensure. Direct or indirect supervision by a dentist may, or may not, be a requirement.

15. What documentation should I maintain in my patient records, and what will be needed on a claim submission when reporting D0411?

    The patient's records would include the same information about services provided as is done with other dental procedures – plus notations of the activities described in the answers to questions 4, 9 and 10 above, as applicable.

    A dental claim would be coded and completed in the same manner as other dental procedures (e.g., date of service, CDT Code, full fee).

16. What dental benefit plan coverage – commercial or governmental – is anticipated?

    As with any procedure documented with a CDT Code there is no guarantee of coverage by a patient's dental benefit plan. At least one third-party payer, Delta Dental of New Jersey, is promoting delivery of HbA1c screening by its network dentists for their patients.

17. What factors should I consider when determining my full fee for the D0411 service?

    Dentists and other practitioners in the dental community acquire their skills and expertise through training and experience. It is up to each individual to determine the value of their time and the time required to provide the service when determining their full fee. Other unique factors such as the cost of acquiring and maintaining a supply of the finger-stick test materials may also be considered.

Questions or Assistance?

Call 800-621-8099 or send an email to dentalcode@ada.org

Notes:

- This document includes content from the ADA publication – *Current Dental Terminology (CDT)* ©2017 American Dental Association (ADA). All rights reserved.
- Version History

Date	Version	Remarks – Change Summary
07/17/2017	1	Initial publication

Guidance Document #: 60-12 Revised September 7, 2007

Identified for Board review based on its age to consider revision, re-adoption or withdrawal. Staff recommends withdrawal of this guidance document because the substance of this guidance is more fully addressed in Guidance Document 60-13 Practice of Dental Hygienists under Remote Supervision which is the next document in the agenda package.

Virginia Board of Dentistry

Administration of Topical Oral Fluorides by Dental Hygienists under Standards adopted by the Virginia Department of Health

- Chapter 702 of the 2007 Acts of the Assembly authorizes a dental hygienist to *administer topical oral fluorides under an oral or written order or a standing protocol issued by a dentist or a doctor of medicine or osteopathic medicine* in accordance with provisions of the Drug Control Act. (§ 54.1-2722)

- The Drug Control Act provides that: *A nurse or a dental hygienist may possess and administer topical fluoride varnish to the teeth of children aged six months to three years pursuant to an oral or written order or a standing protocol issued by a doctor of medicine or osteopathic medicine that conforms to standards adopted by the Virginia Department of Health.* (§ 54.1-3408)

- Only under the narrow provisions of § 54.1-2722 and § 54.1-3408 is a dental hygienist authorized to administer topical oral fluorides under a standing protocol developed by the Department of Health and signed by a doctor of medicine or osteopathic medicine. Such administration is limited to children aged six months to three years who receive home visits from the Health Department or who are enrolled in Head Start programs or who are clients of safety-net healthcare facilities (e.g. rural health, community health centers, mobile dental clinics, and Health Department programs).

Practice of a Dental Hygienist under Remote Supervision

References from § 54.1-2722 and §54.1-3408 of the Code of Virginia

1. **What is meant by "remote supervision"?**

   "Remote supervision" means that a supervising dentist is accessible and available for communication and consultation with a dental hygienist during the delivery of dental hygiene services but ~~such~~ **the supervising** dentist may not have conducted an initial examination of the patients who are ~~to be~~ seen and treated by the dental hygienist. ~~and may~~ **The dentist** need not be present with the ~~dental~~ hygienist when ~~dental~~ hygiene services are being provided.

2. **Who can supervise a dental hygienist to practice dental hygiene under the remote supervision?**

   A dentist who holds an active, license issued by the Virginia Board of Dentistry and who has a dental office physically located in the Commonwealth, including dental offices maintained by a federally qualified health center, charitable safety net facility, free clinic, long-term care facility, elementary or secondary school, Head Start program, or women, infants, and children (WIC) program~~.~~**, including a mobile dental clinic or portable dental operation that is operated by one of these settings.**

3. **What qualifications are necessary for a dental hygienist to practice under remote supervision?**

   The hygienist must have (i) completed a continuing education course designed to develop the competencies needed to provide care under remote supervision offered by an accredited dental education program or from a continuing education provider approved by the Board and (ii) at least two years of clinical experience, consisting of at least 2,500 hours ~~of clinical experience~~.

4. **What is required for a continuing education course in remote supervision?**

   The Board requires a remote supervision course to be no less than two hours in duration and to be offered by an accredited dental education program or an approved sponsor listed in the regulation. The required course content is: a) Intent and definitions of remote supervision; b) Review of dental hygiene scope of practice and delegation of services; c) Administration of controlled substances; d) Patient records/documentation/risk management; e) Remote supervision laws for dental hygienists and dentists; f) Written practice protocols; and g) Settings allowed for remote supervision.

5. **Are there other requirements for practice under remote supervision?**

   A dental hygienist practicing under remote supervision shall have professional liability insurance with policy limits acceptable to the supervising dentist.

6. **In what settings can a dental hygienist practice under remote supervision?**

A hygienist can only practice dental hygiene under remote supervision at a community health center, charitable safety net facility, free clinic, long-term care facility, elementary or secondary school, Head Start program, or women, infants, and children (WIC) program, including a mobile facility or portable dental operation that is operated by one of these settings.

7. **What tasks can a dental hygienist practicing under remote supervision perform?**

A hygienist practicing under remote supervision may (a) obtain a patient's treatment history and consent, (b) perform an oral assessment, (c) perform scaling and polishing, (d) perform all educational and preventative services, (e) take X-rays as ordered by the supervising dentist or consistent with a standing order, (f) maintain appropriate documentation in the patient's chart, (g) administer ~~Schedule VI topical drugs including~~ topical oral flourides~~, topical oral anesthetics and topical and directly applied antimicrobial agents~~ pursuant to subsections ~~J and~~ V of §54.1-3408 of the Code of Virginia, and (h) perform any other service ordered by the supervising dentist or required by statute or Board regulation.

Under the provisions of § 54.1-3408.V as referenced above, a dental hygienist is authorized to possess and administer topical fluoride varnish under a standing protocol issued by a dentist or a doctor of medicine or osteopathic medicine. Such administration is limited to children aged six months to three years who receive home visits from the Health Department or who are enrolled in Head Start programs or who are clients of safety-net healthcare facilities (e.g. rural health, community health centers, mobile dental clinics, and Health Department programs). The standing protocol must conform to the standards adopted by the Department of Health.

8. **Is the dental hygienist allowed to administer local anesthetic or nitrous oxide or other Schedule VI drugs?**

~~No, a~~ **A** ~~dental~~ hygienist practicing under remote supervision is not allowed to administer local anesthetic parenterally or to administer nitrous oxide. **A dental hygienist practicing under remote supervision is not permitted to possess and administer topical oral fluorides outside the scope of the provisions of §54.1-3408 as addressed in question and answer number 7 above. Further, while practicing under remote supervision, a dental hygienist may not possess and administer topical oral anesthetics, topical and directly applied antimicrobial agents for treatment of periodontal pocket lesions or any other Schedule VI topical drug.**

9. **What disclosures and permissions are required?**

Prior to providing a patient dental hygiene services, a dental hygienist practicing under remote supervision shall obtain (1) the patient's or the patient's legal representative's signature on a statement disclosing that the delivery of dental hygiene services under remote supervision is not a substitute for the need for regular dental examinations by a dentist and (2) verbal confirmation from the patient that he does not have a dentist of record whom he is seeing regularly.

10. How is the dental hygienist required to involve the dentist when practicing under remote supervision?

a) After conducting an initial oral assessment of a patient, a dental hygienist practicing under remote supervision may provide further dental hygiene services following a written practice protocol developed and provided by the supervising dentist. Such written practice protocol shall consider, at a minimum, the medical complexity of the patient and the presenting signs and symptoms of oral disease.

b) A dental hygienist practicing under remote supervision shall inform the supervising dentist of all findings for a patient. A dental hygienist practicing under remote supervision may continue to treat a patient for 90 days. After such 90-day period, the supervising dentist, absent emergent circumstances, shall either conduct an examination of the patient or refer the patient to another dentist to conduct an examination. The supervising dentist shall develop a diagnosis and treatment plan for the patient and either the supervising dentist or the dental hygienist shall provide the treatment plan to the patient.

c) The supervising dentist shall review a patient's records at least once every 10 months.

11. Can a dental hygienist see a patient beyond 90 days if the patient has not seen a dentist?

Only if the supervising dentist authorizes such treatment to address an emergent circumstance requiring dental hygiene treatment. The practice protocol developed by the supervising dentist is the initial authorization for a hygienist to provide hygiene treatment under remote supervision for 90 days of treatment. After that 90 day period (absent emergent circumstances), the supervising dentist (or another dentist) must examine the patient, develop a diagnosis and establish the treatment plan for the patient which might address both future dental treatment and dental hygiene treatment and the time spans for such treatment. The dentist decides how often he will see a patient in accord with his professional judgment of the patient's dental needs and the resulting treatment plan. In addition, by statute the dentist must review the patient's records at a minimum of every 10 months. Treatment planning and record review are two distinct requirements.

12. Is a dental hygienist who is practicing under remote supervision allowed to also practice dental hygiene under general supervision whether as an employee or as a volunteer?

Yes, ~~the requirements of~~ § 54.1-2722.F ~~do not prevent practice under general supervision.~~ **specifically states that "nothing in this subsection shall prevent a dental hygienist from practicing dental hygiene under general supervision whether as an employee or as a volunteer."**

13. Are the requirements for remote supervision different for a public health dental hygienist employed by the Virginia Department of Health?

Yes, remote supervision in a public health setting is defined in § 54.1-2722 E:

E. *For the purposes of this subsection, "remote supervision" means that a public health dentist has regular, periodic communications with a public health dental hygienist regarding patient treatment, but such dentist may not have conducted an initial examination of the patients who are to be seen and treated by the dental hygienist and may not be present with the dental hygienist when dental hygiene services are being provided.*

Notwithstanding any provision of law, a dental hygienist employed by the Virginia Department of Health who holds a license issued by the Board of Dentistry may provide educational and preventative dental care in the Commonwealth under the remote supervision of a dentist employed by the Department of Health. A dental hygienist providing such services shall practice pursuant to a protocol adopted by the Commissioner of Health on September 23, 2010, having been developed jointly by (i) the medical directors of the Cumberland Plateau, Southside, and Lenowisco Health Districts; (ii) dental hygienists employed by the Department of Health; (iii) the Director of the Dental Health Division of the Department of Health; (iv) one representative of the Virginia Dental Association; and (v) one representative of the Virginia Dental Hygienists' Association. Such protocol shall be adopted by the Board as regulations.

REVIEW OF GD 60-17 ON RECOVERY OF DICLIPMARY COSTS:

In response to Dr. Brown's concern about the Board's policy on disciplinary cost recovery, the committee was asked to consider the options of eliminating or reducing such costs or reducing the costs for Dental Hygienists and make a recommendation to the Board.

Virginia Board of Dentistry

Policy on Recovery of Disciplinary Costs

Applicable Law and Regulations

- §54.1-2708.2 of the Code of Virginia.
  The Board of Dentistry (the Board) may recover from any licensee against whom disciplinary action has been imposed reasonable administrative costs associated with investigating and monitoring such licensee and confirming compliance with any terms and conditions imposed upon the licensee as set forth in the order imposing disciplinary action. Such recovery shall not exceed a total of $5,000. All administrative costs recovered pursuant to this section shall be paid by the licensee to the Board. Such administrative costs shall be deposited into the account of the Board and shall not constitute a fine or penalty.

- 18VAC60-15-10 of the *Regulations Governing the Disciplinary Process*. The Board may assess:
  - the hourly costs to investigate the case,
  - the costs for hiring an expert witness, and
  - the costs of monitoring a licensee's compliance with the specific terms and conditions imposed up to $5,000, consistent with the Board's published guidance document on costs. The costs being imposed on a licensee shall be included in the order agreed to by the parties or issued by the Board.

Policy

In addition to the sanctions to be imposed which might include a monetary penalty, the Board will specify the costs to be recovered from a licensee in each pre-hearing consent order offered and in each order entered following an administrative proceeding. The amount to be recovered will be calculated using the assessment of costs specified below and will be recorded on a Disciplinary Cost Recovery Worksheet (the worksheet). All applicable costs will be assessed as set forth in this guidance document. Board staff shall complete the worksheet and assure that the cost to be assessed is included in Board orders. The completed worksheets shall be maintained in the case file. Assessed costs shall be paid within 45 days of the effective date of the Order, unless a payment plan has been requested and approved.

Assessment of Costs

Based on the expenditures incurred in the state's fiscal year which ended on June 30, 2017, the following costs will be used to calculate the amount of funds to be specified in a board order for recovery from a licensee being disciplined by the Board:

- $112 per hour for an investigation multiplied by the number of hours the DHP Enforcement Division reports having expended to investigate and report case findings to the Board.
- $137 per hour for an inspection conducted during the course of an investigation, multiplied by the number of hours the DHP Enforcement Division reports having expended to inspect the dental practice and report case findings to the Board.
- If applicable, the amount billed by an expert upon acceptance by the Board of his expert report.
- The applicable administrative costs for monitoring compliance with an order as follows:

- $ 128.25 Base cost to open, review and close a compliance case
- 72.00 For each continuing education course ordered
- 18.75 For each monetary penalty and cost assessment payment
- 18.75 For each practice inspection ordered
- 37.50 For each records audit ordered
- 112.50 For passing a clinical examination
- 102.00 For each practice restriction ordered
- 83.25 For each report required.

Inspection Fee

In addition to the assessment of administrative costs addressed above, a licensee shall be charged $350 for each Board-ordered inspection of his practice as permitted by 18VAC60-21-40 of the *Regulations Governing the Practice of Dentistry.*

VIRGINIA BOARD OF DENTISTRY
APPROVED TEMPLATE
DENTAL LABORATORY SUBCONTRACTOR WORK ORDER FORM

This form is provided by the Board to guide owners of dental laboratories (owners) on meeting the legal requirements for work order forms in §54.1-2719 of the **Code of Virginia.** Owners have the option of using this form or another form to subcontract all or part of a dentist's work order to another dental laboratory (subcontractor). Regardless of the form the owner chooses to use, the information requested below must be included in the work order sent to the subcontractor. The owner is required to retain a copy of the order; to attach the copy to the order received from the dentist; and to maintain both orders for three years.

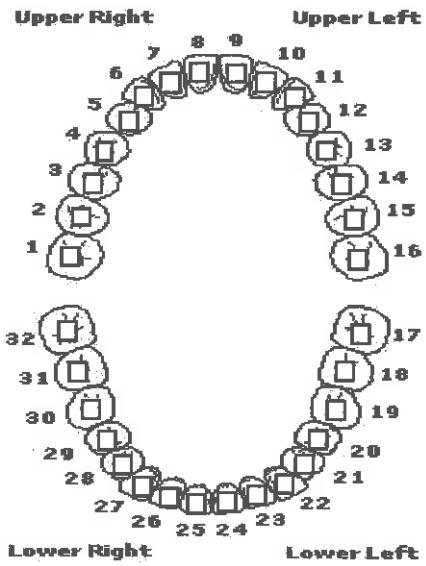
PATIENT NAME, INITIALS or ID#: _____

Subcontractor Name: _____
Physical Address: _____

Contact Person: _____
E-mail Address (optional): _____

Return by: _____

Instructions:



Signature: _____ Date: _____
Name Printed: _____ Telephone: _____
Address: _____
Email Address (optional): _____